

## **Assembly Bill No. 2149**

### **CHAPTER 810**

An act to amend Section 2336 of, and to add Sections 2335.5 and 2338.5 to, the Family Code, relating to family law.

[Approved by Governor September 22, 1996. Filed  
with Secretary of State September 24, 1996.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2149, Kuehl. Marriage: dissolution: default.

Existing law specifies the procedures for obtaining a judgment of dissolution of marriage or legal separation of the parties, including special provisions where the judgment is to be entered upon the default of one of the parties.

This bill would revise these provisions regarding default and, among other things, would require the court clerk to mail specified documents to the spouse who has defaulted, thereby imposing a state-mandated local program; require any affidavit or offer of proof submitted to the court relating to dissolution or legal separation upon the default of a party or upon a referee's findings to include specified information pertaining to income and the value of the community estate; require the signature of a spouse who has defaulted on any marital settlement agreement or on any stipulated judgment to be notarized; and require the court clerk to give notice of entry of judgment of dissolution or nullity of marriage or legal separation to the attorney for each party or to the party, if unrepresented, where the judgment is to be granted upon the default of one of the parties, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2335.5 is added to the Family Code, to read:

2335.5. In a proceeding for dissolution of marriage or legal separation of the parties, where the judgment is to be entered by default, the petitioner shall provide the court clerk with a stamped envelope bearing sufficient postage addressed to the spouse who has defaulted, with the address of the court clerk as the return address, and the court clerk shall mail a copy of the request to enter default to that spouse in the envelope provided. A judgment of dissolution or legal separation, including relief requested in the petition, shall not be denied solely on the basis that the request to enter default was returned unopened to the court. The court clerk shall maintain any such document returned by the post office as part of the court file in the case.

SEC. 2. Section 2336 of the Family Code is amended to read:

2336. (a) No judgment of dissolution or of legal separation of the parties may be granted upon the default of one of the parties or upon a statement or finding of fact made by a referee; but the court shall, in addition to the statement or finding of the referee, require proof of the grounds alleged, and the proof, if not taken before the court, shall be by affidavit. In all cases where there are minor children of the parties, each affidavit or offer of proof shall include an estimate by the declarant or affiant of the monthly gross income of each party. If the declarant or affiant has no knowledge of the estimated monthly income of a party, the declarant or affiant shall state why he or she has no knowledge. In all cases where there is a community estate, each affidavit or offer of proof shall include an estimate of the value of the assets and the debts the declarant or affiant proposes to be distributed to each party.

(b) If the proof is by affidavit, the personal appearance of the affiant is required only when it appears to the court that any of the following circumstances exist:

(1) Reconciliation of the parties is reasonably possible.

(2) A proposed child custody order is not in the best interest of the child.

(3) A proposed child support order is less than a noncustodial parent is capable of paying.

(4) A personal appearance of a party or interested person would be in the best interests of justice.

(c) An affidavit submitted pursuant to this section shall contain a stipulation by the affiant that the affiant understands that proof will be by affidavit and that the affiant will not appear before the court unless so ordered by the court.

SEC. 3. Section 2338.5 is added to the Family Code, to read:

2338.5. Where a judgment of dissolution or nullity of marriage or legal separation of the parties is to be granted upon the default of one of the parties:

(a) The signature of the spouse who has defaulted on any marital settlement agreement or on any stipulated judgment shall be notarized.

(b) The court clerk shall give notice of entry of judgment of dissolution of marriage, nullity of marriage, or legal separation to the attorney for each party or to the party, if unrepresented.

(c) For the purpose of mailing the notice of entry of judgment, the party submitting the judgment shall provide the court clerk with a stamped envelope bearing sufficient postage addressed to the attorney for the other party or to the party, if unrepresented, with the address of the court clerk as the return address. The court clerk shall maintain any such document returned by the post office as part of the court file in the case.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

